

State of California
BOARD OF EQUALIZATION
USE FUEL TAX REGULATIONS

Regulation 1316. EXEMPT USES OF FUEL IN MOTOR VEHICLE.

Reference: Sections 8605, 8651, 8652, 8653, 8653.1, Revenue and Taxation Code.

The tax does not apply with respect to that fuel which the user establishes to the satisfaction of the board is used:

(a) In the operation of a motor vehicle off the highway. "Off the highway" includes private property, a way or place permanently or temporarily closed to public use for the purpose of vehicular travel, or any way or place used for vehicular travel which is not a highway as defined in Regulation 1303.

A vehicle is operated upon a highway if it moves any distance in the general direction of the highway, whether upon the paved or unpaved portion thereof. An operation is not conducted upon a highway when a vehicle is operated thereon only for the purpose of crossing the highway from private property on one side to private property directly on the other and the vehicle is not operated for any distance in the general direction of the highway in making the crossing.

(b) In the operation of a motor vehicle on any highway which is under the jurisdiction of the United States Department of Agriculture and with respect to the use of such highway the user pays, or contributes to, the cost of construction or maintenance thereof pursuant to an agreement with, or permission of, that agency. "Highway which is under the jurisdiction of the United States Department of Agriculture" (hereafter referred to as U.S.D.A.) includes a way or place in the Forest Service road system within a National Forest, or partly within the National Forest and partly on private property, but does not include a state or county highway traversing the National Forest.

A user who "pays, or contributes to the cost of construction or maintenance" includes any user who shares in the cost of construction or maintenance of a highway with respect to the use of which the exemption is claimed, either directly as a party to a joint construction or maintenance agreement with U.S.D.A., or indirectly through any person who is a party to such an agreement. "Pays or contributes", in addition to monetary payments or contributions, includes: (1) the bearing in whole or in part of the cost of construction or maintenance by the user who performs the work himself or by his employment of others to perform the work; or (2) the sharing of the cost of construction or maintenance indirectly by any person who contracts with a party to such an agreement to perform transportation by motor vehicle upon such U.S.D.A. highway, or any subcontractor of such contractor who makes a like use of the highway, when the share amount of the contribution is specified in the contract between the respective contracting parties, notwithstanding that such amount may be reflected in a lump sum rate of compensation for the transportation service or transportation and logging or other services.

Any user claiming exemption from tax with respect to fuel used on a highway which is under the jurisdiction of the U.S.D.A. shall also keep records to show a description of the highway and route traveled thereon, and the amounts paid or contributed directly or indirectly for the cost of construction or maintenance of the highway pursuant to an agreement with the U.S.D.A. When a motor vehicle is operated partly on such highway and partly on a highway of this state or any political subdivision thereof, the gallonage of fuel used in operations on the U.S.D.A. highway for which exemption is claimed may be determined: (1) in the proportion that the miles operated on such highway bears to the sum of the miles operated thereon and the miles operated upon any other highway; or (2) by computing the gallonage of fuel used on the U.S.D.A. highway by dividing a miles per gallon rate into the total miles operated on the U.S.D.A. highway. The miles per gallon rate shall be determined by a fuel consumption test made under typical operating conditions and subject to approval of the Board.

(c) In the operation of an implement of husbandry, truck or farm tractor which is used in agricultural operations off the highway and only incidentally operated upon a highway in moving between farms or parts of farms which are in close proximity and which vehicles are exempt from registration under the Vehicle Code.

Regulation 1316. (Continued)

(d) In the operation of any construction equipment while operated within the confines or limits of a construction project and only incidentally operated on the highway within such confines or limits and which equipment is exempt from registration under the Vehicle Code. As used in this subsection and subsection (c), above, "incidentally operated" does not include the use of agricultural vehicles or special construction equipment for the transportation of persons or property upon the highways in an operation which would require registration of the vehicle under the Vehicle Code.

(e) For a purpose other than the generation of power to propel a motor vehicle on a highway, including fuel used to drive power take-off equipment to turn a rotary cement mixer, or to operate an air conditioner or garbage compressor.

(f) Any user claiming exemption from tax under this regulation shall accurately maintain adequate records to show the operations claimed to be exempt including the miles traveled and fuel used in order to establish to the satisfaction of the Board that the user is entitled to the exemption.

History: Effective September 15, 1961.

Amended effective June 7, 1969.

Amended July 8, 1971, effective July 20, 1971.

Amended October 18, 1978, effective December 17, 1978. Amends sections (b), (d), and (e), and adopts section (f).

Amended December 9, 1998, effective May 20, 1999. Deleted language after first sentence of subdivision (e), relating to use of diesel fuel in concrete mixers.